

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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OCT - 4 2001

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Amendment of Section 73.202(b))
FM Broadcast Stations)
(Gray, Forsyth, Irwinton, and)
Atlanta, Georgia))

To: Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

**PETITION TO DISMISS OR RETURN
DEFECTIVE PETITION FOR RULEMAKING**

Southern Broadcasting Companies, Inc. ("Southern")¹, by its attorneys, hereby respectfully moves the Commission to dismiss the "Petition for Rule Making" filed on or about September 1, 2001, by H. David Hedrick d/b/a New Tracks Media ("New Tracks") that proposes to amend Section 73.202 of the Commission's Rules to substitute Channel 279A for Channel 261 A at Forsyth, GA, substitute Channel 278A for Channel 279A at Irwinton, GA, and assign Channel 261A to Gray, GA, as its second aural service. For the reasons set forth herein New Track's proposal is defective, and must be dismissed or returned without issuance of a notice of proposed rule making.

New Tracks proposes to allot Channel 261A to Gray, Georgia, at coordinates **north latitude 32 degrees 59 minutes 11 seconds and west longitude 83 degrees 34 minutes 51 seconds**. Attached hereto is a Technical Statement in support of this petition

¹ Southern is the proposed assignee of the license of WXTK(FM), Washington, GA (See File No. BALH-20010713AAP, granted August 29, 2001. Public Notice Report No. 45062, released September 4, 2001. The transaction has not yet been consummated.)

(See Exhibit 1) showing that the proposal is short spaced to a proposal filed by Southern to relocate station WXKT, Channel 261A, from Washington, GA to Watkinsville, GA. Southern, proposed assigned of WXKT, filed its petition for rule making July 26, 2001, predating New Tracks' proposal. New Tracks did not take Southern's proposal into consideration in its petition for rule making, therefore, the New Tracks petition is unacceptable for filing.

Moreover, the Technical Statement shows that New Tracks' proposal is also flawed since it is short spaced to a petition to add channel 264A at Haddock, Georgia.

In addition, Exhibit 1B of the Technical Statement shows that New Tracks' proposal is unacceptable because a station operating from a site in the hypothetical fully spaced "usable area" for Channel 261A, could not place a city-grade signal over Gray, Georgia, as required by the rules.

Finally, the Technical Statement shows that New Tracks proposes to substitute Channel 279A for Channel 261A at Forsyth, Georgia, and modify the license of WQMJ, Forsyth, to operate on Channel 279A. New Tracks' proposed coordinates for Channel 279A at Forsyth (NL 32 58 27, WL 83 52 02) is short-spaced to two applications² for the use of Channel 279A at Cusseta, Georgia.

Southern herein does not discuss any other aspects of New Tracks' petition (for example whether New Tracks has fully complied with the procedures necessary for downclassing a Class C station or whether the public interest would be served by allotting a second FM channel to Gray) and reserves the right to raise these matters and any other

² Applications filed by Cusseta Broadcasting Corporation (File Nos. BPH-19930701MG) and Signature Broadcasting, Ltd., (BPH-19930701ME) are shown in the FCC's CDBS system as "tendered for filing."

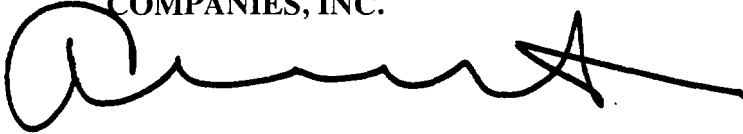
matters in any future proceedings before the Commission, should the Commission not dismiss New Tracks' petition.

In *Cut and Shoot, Texas*, 11 FCC Rcd 16383 (1986), the Commission denied reconsideration of its prior action in returning a petition for rule making that was short-spaced to a licensed facility. Section 73.208 of the Rules specifies the applicable reference point to be used in determining FM minimum separations as "authorized" transmitter sites. Here, Southern has shown that New Tracks' petition violates the rules.

The flaws in New Tracks' petition require that its petition be dismissed or returned without any further consideration by the FCC's staff.

Respectfully submitted,

**SOUTHERN BROADCASTING
COMPANIES, INC.**

A handwritten signature in black ink, appearing to read 'Gary S. Smithwick', with a stylized flourish at the end.

Gary S. Smithwick
Its Counsel

SMITHWICK & BELENDIUK, P.C.
5028 Wisconsin Avenue, N.W.
Suite 301
Washington, DC 20016
202-363-4050

October 4, 2001

Southern Broadcasting Companies, Inc.
WXKT-FM CH-261A
Washington - Watkinsville, Georgia

Technical Statement

PETITION TO DISMISS

September 19, 2001

The Commission has before it a petition for Rulemaking submitted by H. David Hedrick, dba New Tracks Media (NTM), to add channel 261A to Gray, Georgia, substitute channel 279A for 261A at Forsyth, Georgia, substitute channel 278A for 279A at Irwinton, Georgia and down class WVEE, Atlanta, Georgia from channel 277C to channel 277C0.

This petition clearly shows the petition filed by NTM is technically flawed.

NTM proposes to use the following coordinates for channel 261A at Gray, Georgia. 32-59-11 N. latitude - 083-34-51 W. longitude. Exhibit-1 clearly shows this site to be flawed. This exhibit shows the proposal would be short spaced to a proposal filed by Southern Broadcasting Companies, Inc. to add channel 261A at Watkinsville, Georgia and delete channel 261A at Washington, Georgia. This proposal has been accepted by the Commission and is part of the FCC's CDBS system. The petition is also flawed because it is short spaced to a petition to add channel 264A at Haddock, Georgia.

Offered as exhibit 1A is a spacing study that shows (assuming the change at Forsyth from channel 261A to channel 279A) some fully spaced area for channel 261A. Exhibit 1B shows that from the fully spaced area to locate, this proposal could not provide a city grade (3.16mV/m) contour over the city of Gray, Georgia, Therefore, this proposal is flawed.

NTM proposes to change station WQMJ, Forsyth, Georgia from channel 261A to channel 279A. This proposal is also technically flawed. NTM's proposed coordinates are 32-58-27 N. latitude - 083-52-02 W. longitude. Exhibit 2 clearly shows this proposal is short spaced to two applicants for channel 279A at Cusseta, Georgia which must be protected. Also noted is a proposal to add channel 280C3 at Montezuma, Georgia that has been disposed of by the FCC.

The attached technical statement and exhibits clearly shows the proposal set forth by New Tracks Media is technically flawed and therefore should be dismissed without consideration.

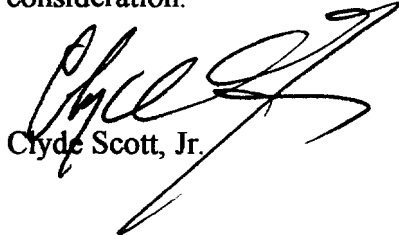
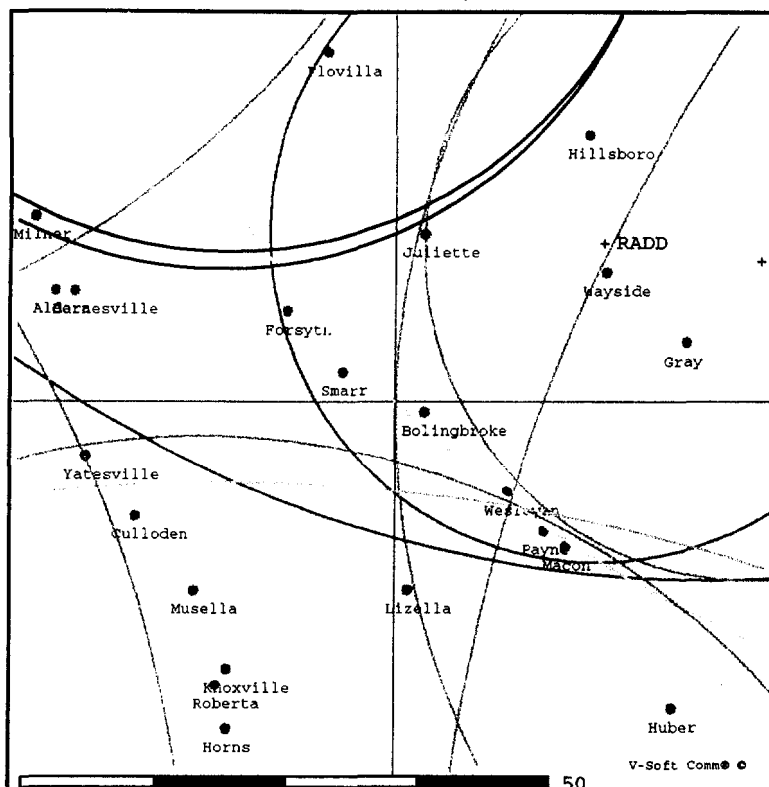

Clyde Scott, Jr.

EXHIBIT - 1
CHANNEL 261A AT GRAY, GEORGIA

FMCONT^(TM) LOCATE STUDY

Ch 261 A
100.1 MHz

N. Lat. 32 59 11
W. Lng. 83 34 51



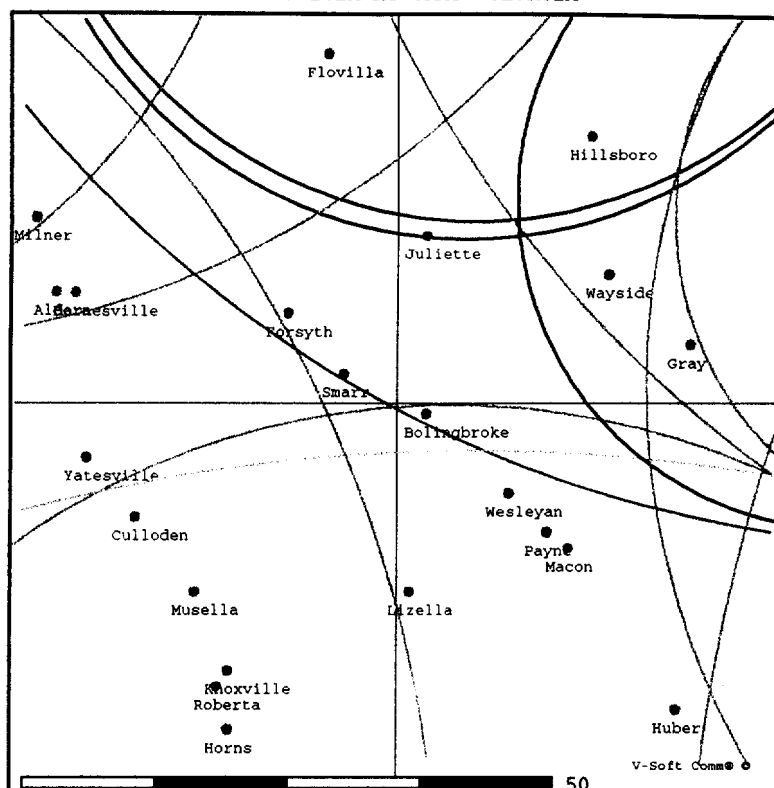
Call	CH#	Location		D-KM	Azi	FCC	Margin
RADD	261A	Watkinsville	GA	102.78	17.0	115.0	-12.22
RADD	264A	Haddock	GA	24.86	50.0	31.0	-6.14
WXKT	261A	Washington	GA	115.06	43.8	115.0	0.06
RDEL	261A	Washington	GA	115.06	43.8	115.0	0.06
WSNTFM	260A	Sandersville	GA	72.12	91.0	72.0	0.12
WCOPFM	260A	Unadilla	GA	77.40	193.6	72.0	5.40
RDEL	264A	Milledgeville	GA	36.64	67.1	31.0	5.64
RDEL	264A	Milledgeville	GA	36.64	67.1	31.0	5.64
WLRR	264A	Milledgeville	GA	36.64	67.1	31.0	5.64
WOBB	262C*	Tifton	GA	173.25	185.4	165.0	8.25
WMCD	261C2	Statesboro	GA	179.30	108.8	166.0	13.30
RADD	264C3	Covington	GA	56.81	343.1	42.0	14.81
RADD	264C3	Social Circle	GA	58.19	344.3	42.0	16.19
WGSY	261A	Phenix City	AL	144.04	248.9	115.0	29.04
WNNX	259C0	Atlanta	GA	115.97	319.9	86.0	29.97
ALLO	263C2	Anniston	AL	107.65	301.6	55.0	52.65
WNSY.C	261C3	Talking Rock	GA	200.91	335.5	142.0	58.91
WWWQ.A	263C2	College Park	GA	114.03	319.1	55.0	59.03
WWWQ	263C3	College Park	GA	114.03	319.1	42.0	72.03

EXHIBIT - 1A
CHANNEL 261A AT GRAY GEORGIA

FMCONT^(TM) LOCATE STUDY

Ch 261 A
100.1 MHz

N. Lat. 32 57 31
W. Lng. 83 49 49



Call	CH#	Location		D-KM	Azi	FCC	Margin
RADD	261A	Watkinsville	GA	114.54	27.6	115.0	-0.46
WCOPFM	260A	Unadilla	GA	72.34	175.9	72.0	0.34
WOBB	262C*	Tifton	GA	169.58	177.5	165.0	4.58
WGSY	261A	Phenix City	AL	121.31	246.1	115.0	6.31
RADD	264A	Haddock	GA	46.45	65.6	31.0	15.45
RADD	264C3	Covington	GA	57.76	6.5	42.0	15.76
RADD	264C3	Social Circle	GA	59.50	7.0	42.0	17.50
WNNX	259C0	Atlanta	GA	105.13	330.6	86.0	19.13
RDEL	261A	Washington	GA	134.24	49.9	115.0	19.24
WXKT	261A	Washington	GA	134.24	49.9	115.0	19.24
WSNTFM	260A	Sandersville	GA	95.44	88.8	72.0	23.44
RDEL	264A	Milledgeville	GA	59.64	73.0	31.0	28.64
RDEL	264A	Milledgeville	GA	59.64	73.0	31.0	28.64
WLRR	264A	Milledgeville	GA	59.64	73.0	31.0	28.64
WMCD	261C2	Statesboro	GA	200.67	105.7	166.0	34.67
ALLO	263C2	Anniston	AL	90.57	310.9	55.0	35.57
WWWQ.A	263C2	College Park	GA	102.90	329.9	55.0	47.90
WNSY.C	261C3	Talking Rock	GA	195.29	342.0	142.0	53.29
RADD	261C3	Anniston	AL	201.48	294.1	142.0	59.48
WWWQ	263C3	College Park	GA	102.90	329.9	42.0	60.90
RADD	263C3	College Park	GA	108.61	325.1	42.0	66.61

EME Communications - Moultrie, GA. U.S.A.

PROPOSED

Latitude: 32-57-31 N
Longitude: 083-49-49 W
Power: 6.00 kW
Channel: 261
Frequency: 100.1 MHz
AMSL Height: 250.15 m
Elevation: 159.17 m
Horiz. Pattern: Omni
Vert. Pattern: No
Prop Model: None

EXHIBIT - 1B

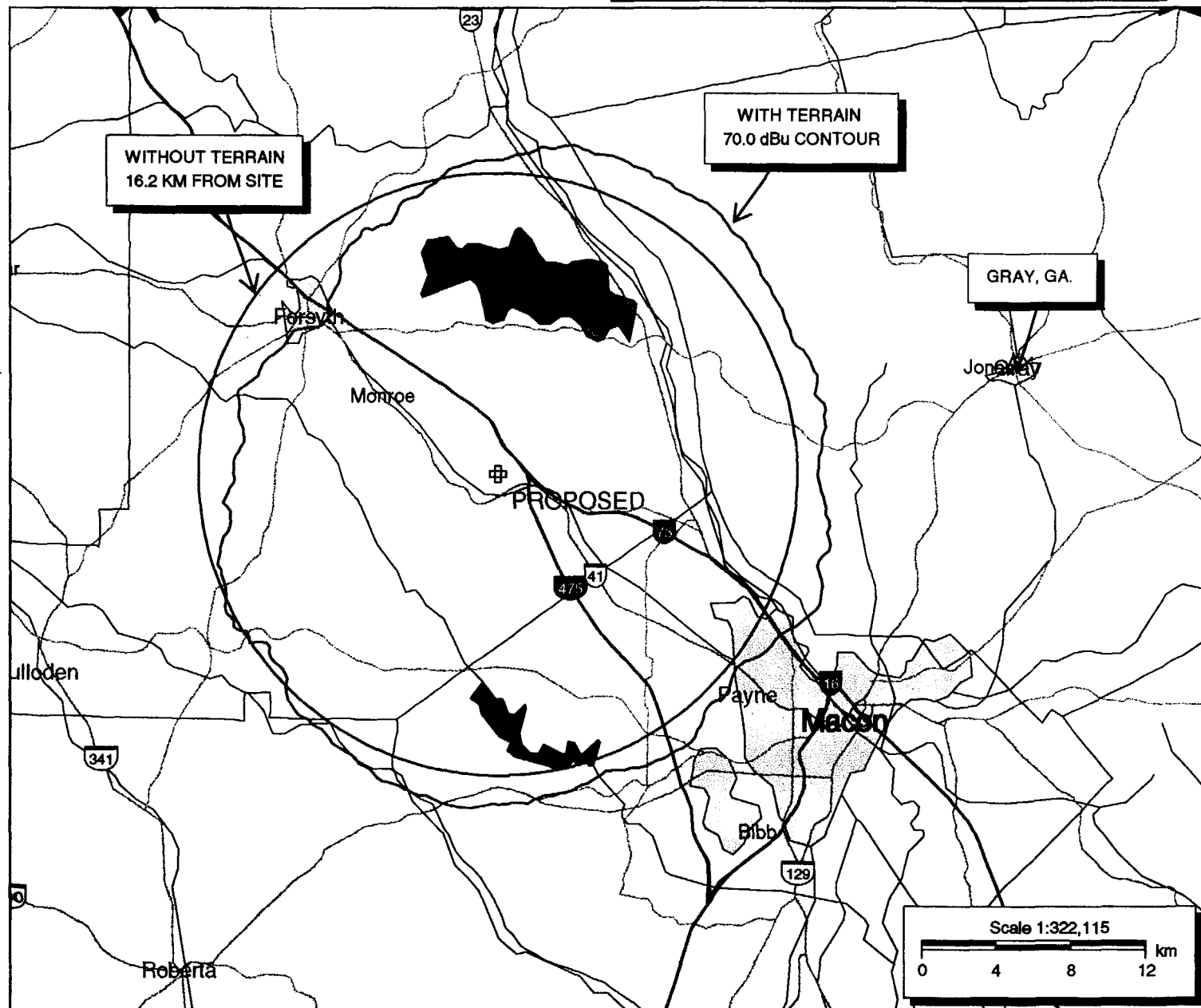
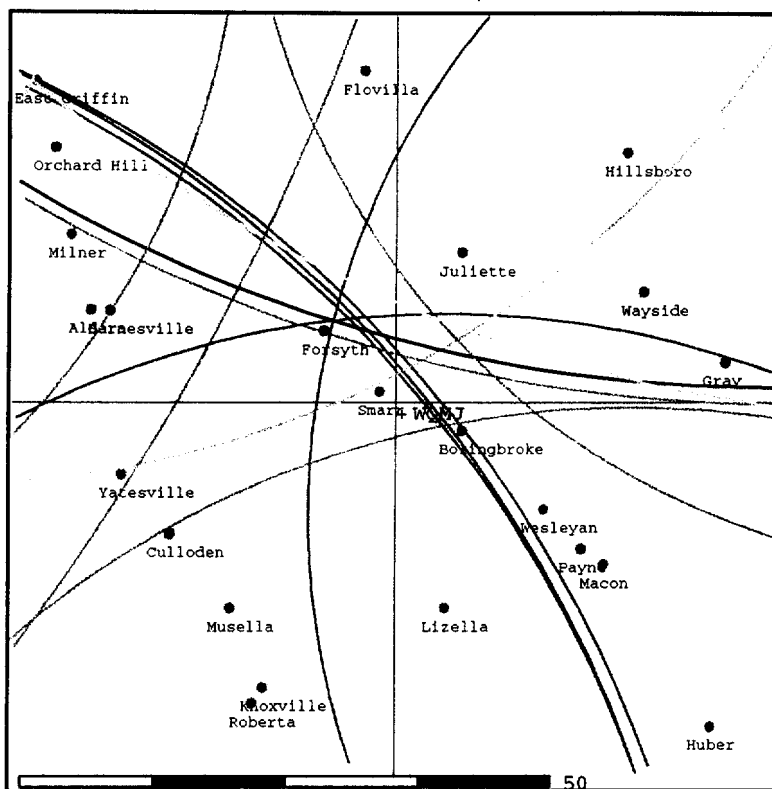


EXHIBIT - 2
CHANNEL 27 A AT FORSYTH, GEORGIA

FMCONT^(TM) LOCATE STUDY

Ch 279 A
103.7 MHz

N. Lat. 32 58 27
W. Lng. 83 52 02



Call	CH#	Location		D-KM	Azi	FCC	Margin
WQMJ	279A	Forsyth	GA	0.00	0.0	115.0	-115.00
RADD	280C3	Montezuma	GA	80.87	176.7	89.0	-8.13
WVKX	278A	Irwinton	GA	64.63	99.2	72.0	-7.37
930701	279A	Cusseta	GA	111.66	228.9	115.0	-3.34
930701	279A	Cusseta	GA	112.52	229.6	115.0	-2.48
ALLO	279A	Cusseta	GA	112.97	229.0	115.0	-2.03
WVEE	277C*	Atlanta	GA	97.33	333.7	95.0	2.33
RDEL	280C3	Hawkinsville	GA	92.17	166.1	89.0	3.17
WQSY	280C3	Hawkinsville	GA	92.17	166.1	89.0	3.17
ALLO	279C3	Arcade	GA	146.39	14.2	142.0	4.39
RADD	279C3	Commerce	GA	147.75	13.9	142.0	5.75
WDDK	280A	Greensboro	GA	80.21	45.9	72.0	8.21
RDEL	279C3	Royston	GA	150.71	21.4	142.0	8.71
WPUP	279C3	Royston	GA	150.71	21.4	142.0	8.71
RDEL	279C3	Royston	GA	150.71	21.4	142.0	8.71
RADD	279C	Springville	AL	244.05	297.6	226.0	18.05
ALLO	279C	Gadsden	AL	244.05	297.6	226.0	18.05
WALR.C	281C1	La Grange	GA	102.41	298.7	75.0	27.41
WALRFM	281C1	La Grange	GA	102.41	298.7	75.0	27.41
RDEL	279C1	Gadsden	AL	244.05	297.6	200.0	44.05
WJAD	278C3	Leesburg	GA	145.56	187.1	89.0	56.56
WQEN	279C1	Gadsden	AL	257.84	292.3	200.0	57.84
RDEL	279C1	Gadsden	AL	257.84	292.3	200.0	57.84
RADD	276C3	East Dublin	GA	100.71	118.9	42.0	58.71
WULS	279A	Broxton	GA	180.09	148.5	115.0	65.09
WBMZ.A	279A	Metter	GA	182.56	110.0	115.0	67.56
ALLO	279A	Metter	GA	183.05	110.0	115.0	68.05

DECLARATION AND QUALIFICATIONS OF PREPARER

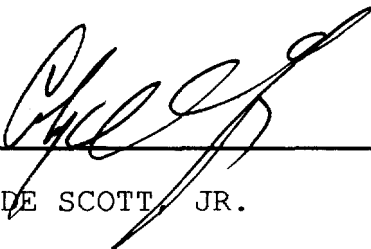
STATE OF GEORGIA)
CITY OF MOULTRIE)
COLQUITT COUNTY)

§

CLYDE SCOTT, JR. , UNDER PENALTY OF PERJURY, DECLARES AND SAYS
HE IS A BROADCAST ENGINEER AND PRESIDENT OF EME COMMUNICATIONS.
HE HAS BEEN ENGAGED TO PREPARE THE ATTACHED TECHNICAL EXHIBIT.

THAT HIS QUALIFICATIONS ARE A MATTER OF RECORD BEFORE THE FEDERAL
COMMUNICATIONS COMMISSION AND HAS BEEN ACTIVE IN THE BROADCAST
INDUSTRY SINCE 1965 AND IN BROADCAST ENGINEERING SINCE 1972. THAT
HE IS THE HOLDER OF GENERAL RADIOTELEPHONE LICNESE NO. PG-6-30133.

THAT THE ATTACHED TECHNICAL EXHIBIT WAS EITHER PREPARED BY HIM
OR UNDER HIS DIRECT SUPERVISION. ALL MATERIAL AND EXHIBITS HERETO
ARE BELIEVED TO BE TRUE AND CORRECT.



CLYDE SCOTT, JR.

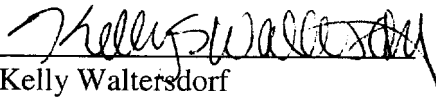
CERTIFICATE OF SERVICE

I, Kelly Waltersdorf, a legal assistant in the law offices of Smithwick & Belendiuk, P.C., do hereby certify that copies of the foregoing Petition to Deny have been served by United States mail, postage prepaid, this October 4, 2001, upon the following:

Robert Hayne, Esq.
Mass Media Bureau
Federal Communications Commission
The Portals II
445 Twelfth Street, S.W.
Room A-232
Washington, DC 20554

H. David Hedrick
New Tracks Media
P. O. Box 27
317 Stonegables Court
Gray, GA 31032

*Hand Delivered


Kelly Waltersdorf